

(i) The surety must reside within the State in which the principal place of business or legal residence of the primary obligor is located;

(ii) The surety must have property subject to execution of a current market value, above all encumbrances, equal to at least the penalty of the bond;

(iii) All real property which the surety offers as security must be located in the State in which the principal place of business or legal residence of the primary obligor is located;

(iv) The surety must agree not to mortgage, or otherwise encumber, any property offered as security while the bond continues in effect without first securing the permission of the officer with whom the bond is filed; and

(v) The surety must file with the bond, and annually thereafter so long as the bond continues in effect, an affidavit as to the adequacy of the security, executed on the appropriate form furnished by the appropriate ATF officer.

Partners may not act as sureties upon bonds of their partnership. Stockholders of a corporate principal may be accepted as sureties provided their qualifications as such are independent of their holdings of the stock of the corporation.

(4) *Adequacy of surety.* No surety or security shall be accepted if it does not adequately protect the interest of the United States.

(26 U.S.C. 7101)

[T.D. ATF-301, 55 FR 47649, Nov. 14, 1990, as amended by T.D. ATF-450, 66 FR 29028, May 29, 2001]

#### § 70.282 Single bond in lieu of multiple bonds.

In the case of bonds required under this part, a single bond will not be accepted in lieu of two or more bonds.

(26 U.S.C. 7102)

[T.D. ATF-301, 55 FR 47650, Nov. 14, 1990]

#### MISCELLANEOUS PROVISIONS

SOURCE: Sections 70.301 through 70.306 added by T.D. ATF-301, 55 FR 47650, Nov. 14, 1990, unless otherwise noted.

#### § 70.301 Reproduction of returns and other documents.

(a) *In general.* The appropriate ATF officer may contract with any Federal agency or any person to have such agency or person process films and other photoimpressions of any return, statement, document, or of any card, record, or other matter required under the provisions of 26 U.S.C. enforced and administered by the Bureau, and make reproductions from such films and photoimpressions.

(b) *Safeguards—(1) By private contractor.* Any person entering into a contract with the Bureau for the performance of any of the services described in paragraph (a) of this section shall agree to comply, and to assume responsibility for compliance by that person's employees, with the following requirements:

(i) The films or photoimpressions, and reproductions made therefrom, shall be used only for the purpose of carrying out the provisions of the contract, and information contained in such material shall be treated as confidential and shall not be divulged or made known in any manner to any person except as may be necessary in the performance of the contract;

(ii) All the services shall be performed under the supervision of the person with whom the contract is made or that person's responsible employees;

(iii) All material received for processing and all processed and reproduced material shall be kept in a locked and fireproof compartment in a secure place when not being worked upon;

(iv) All spoilage of reproductions made from the film or photoimpressions supplied to the contractor shall be destroyed, and a statement under the penalties of perjury shall be submitted to the Bureau that such destruction has been accomplished; and

(v) All film, photoimpressions, and reproductions made therefrom, shall be transmitted to the Bureau by personal delivery, first-class mail, parcel post, or express.

(2) *By Federal agency.* Any Federal agency entering into a contract with the Bureau for the performance of any services described in paragraph (a) of this section, shall treat as confidential

all material processed or reproduced pursuant to such contract.

(3) *Inspection.* The Bureau shall have the right to send its officers and employees into the office and plants of Federal agencies and other contractors for inspection of the facilities and operations provided for the performance of any work contracted or to be contracted for under this section.

(4) *Criminal sanctions.* For penalty provisions relating to the unauthorized use and disclosure of information in violation of the provisions of this section, see 26 U.S.C. 7213(c).

(26 U.S.C. 7513)

**§ 70.302 Fees and costs for witnesses.**

(a) *Introduction.* Title 26 U.S.C. 7610 provides that the Bureau may make payments to certain persons who are summoned to give information to the Bureau under 26 U.S.C. 7602 and § 70.22 of this part. Under 26 U.S.C. 7610 witnesses generally will not be reimbursed for actual expenses incurred but instead will be paid in accordance with the payment rates established by regulations. Paragraph (b) of this section contains elaborations of certain terms found in 26 U.S.C. 7610 and definitions of other terms used in the regulations under 26 U.S.C. 7610 (a) and (b); and paragraphs (c) and (d) of this section contain rules and rates applicable to payments under 26 U.S.C. 7610.

(b) *Definitions—(1) Directly incurred costs.* Directly incurred costs are costs incurred solely, immediately, and necessarily as a consequence of searching for, reproducing, or transporting records in order to comply with a summons. They do not include a proportionate allocation of fixed costs, such as overhead, equipment depreciation, etc. However, where a third party's records are stored at an independent storage facility that charges the third party a search fee to search for, reproduce, or transport particular records requested, these fees are considered to be directly incurred by the summoned third party.

(2) *Reproduction cost.* Reproduction costs are costs incurred in making copies or duplicates of summoned documents, transcripts, and other similar material.

(3) *Search costs.* Search costs include only the total cost of personnel time directly incurred in searching for records or information and the cost of retrieving information stored by computer. Salaries of persons locating and retrieving summoned material are not included in search costs. Also, search costs do not include salaries, fees, or similar expenditures for analysis of material or for managerial or legal advice, expertise, or research, or time spent for these activities.

(4) *Third party.* A third party is any person served with a summons, other than a person with respect to whose liability a summons is issued, or an officer, employee, agent, accountant, or attorney of that person.

(5) *Third party records.* Third party records are books, papers, records, or other data in which the person with respect to whose liability a summons is issued does not have a proprietary interest at the time the summons is served.

(6) *Transportation costs.* Transportation costs include only costs incurred to transport personnel to search for records or information requested and costs incurred solely by the need to transport the summoned material to the place of examination. These costs do not include the cost of transporting the summoned witness for appearance at the place of examination. See paragraph (c)(2) of this section for payment of travel expenses.

(c) *Conditions and rates of payments—*

(1) *Basis for payment.* Payment for search, reproduction, and transportation costs will be made only to third parties served with a summons to produce third party records or information and only for material requested by the summons. Payment will be made only for those costs both directly incurred and reasonably necessary. No payment will be made until the third party has satisfactorily complied with the summons and has submitted an itemized bill or invoice showing specific details concerning the costs to the Bureau employee before whom the third party was summoned. If a third party charges any other person for any cost for which the third party is seeking payment from the Bureau, the amount charged to the other person